

5-1-1979

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Recommended Citation

Stephen Goldstein, *Human Values and Relocation Assistance : At the Crossroads*, 7 B.C. Env'tl. Aff. L. Rev. 463 (1979), <http://lawdigitalcommons.bc.edu/ealr/vol7/iss3/4>

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HUMAN VALUES AND RELOCATION ASSISTANCE: AT THE CROSSROADS

*Stephen Goldstein**

I. INTRODUCTION

The term "environment" means a great deal more than merely the quality of our air, the amount of chemical pollution in our waters and the condition of our oceans, mountains, trees and streams. The environment encompasses all of the factors that can affect the quality of our life.¹ The physical and social conditions of our urban centers and their effect upon the inhabitants of these cities are significant factors in an examination of our urban environment. Few would deny that overcrowding, squalor, crime and substandard housing are adverse human environmental factors. Furthermore, most would agree that our dwelling place is the most basic and important factor affecting our quality of life.

Over the years, various federal agencies have been responsible for requiring large numbers of low and moderate income city dwellers to vacate their homes and neighborhoods.² The displacement has been necessary to carry out federally funded renewal projects in the inner cities in an effort to eliminate the spread of urban blight.³ The

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¹ Jones v. HUD, 390 F. Supp. 579, 591 (E.D. La. 1974). See, e.g., Silva v. Romney, 473 F.2d 287 (1st Cir. 1973).

² Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U. L. REV. 552 (1976).

³ Senator Edmund D. Muskie (D. Maine), the Senate sponsor of S1, The Uniform Relocation Assistance and Land Acquisition Policies Act of 1969, 42 U.S.C. §§ 4601-55 (1976) stated on the day of the Senate's passage of the Act:

There are more than 50 Federal programs which result in the condemning of land and quite literally, the bulldozing of hundreds of thousands of people from their homes and businesses annually. Many of these people are low-income families. Many are the elderly; they are small farmers and small businessmen. In most cases their entire lives and economic and social well-being have centered around the property or neighborhoods which

impact of forced relocation and the resultant costs to those displaced should be examined by anyone concerned with the urban environment.

Today such large scale urban renewal projects are relatively rare in the inner cities of America. In their place, however, the federal government has undertaken programs designed to encourage participation of the private sector in the continuing effort to provide low- and moderate-income housing.⁴ The basic structure of these programs is for the government, through the Department of Housing and Urban Development (HUD), to insure the mortgages of private developers in the low-income market.⁵

As with any program carried out on a nationwide scale, the mortgage insurance program has had its share of successes and failures.⁶ The failures seem to follow a basic pattern: initially the project's sponsors or owners find themselves in financial difficulty and default on the mortgage. After paying the mortgage insurance proceeds to the mortgagor, HUD obtains the title to the property at a foreclosure sale and, following mandatory studies, decides upon the final disposition of the project. At this point the tenants who reside in such housing projects usually are evicted so that HUD can demolish the building and sell the land.⁷ Thus, the relocation problems previously associated with massive urban renewal projects have also been endemic to the newer efforts in urban revitalization.

At the end of fiscal 1975, HUD held title to 67,875 single family units and 38,665 multi-family units acquired through such repossession of federally financed private homes and subsidized housing projects.⁸ An increasing default rate in the mortgage insurance program has made the federal government one of the largest owners of inner city properties.⁹ These foreclosures and subsequent disposi-

are being uprooted.

115 CONG. REC. 31533-34 (1969). Senator Muskie further stated that various government estimates placed the displacement figure over the ten-year period forthcoming to be in excess of one million people; 180,000 businesses and 40,000 farms. *Id.*

⁴ See generally National Housing Act §§ 202, 203, 220, 221, 235, 236, 12 U.S.C. §§ 1706-1713 (1976).

⁵ *Id.*

⁶ See generally *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

⁷ *Id.*

⁸ Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U.L. REV. 552, 552 n.1 (1976).

⁹ HOUSE COMM. ON GOVERNMENT OPERATIONS, DEFAULTS ON FHA INSURED HOME MORTGAGES

tions of property by HUD¹⁰ have led to the population displacement with which this article is concerned.

While the government is statutorily obligated to offer relocation assistance for those displaced by traditional urban renewal projects,¹¹ it has balked at providing aid to persons displaced by mortgage foreclosures.¹² The issue presented is whether the tenants evicted in these mortgage foreclosures are entitled to federal relocation assistance as provided for in the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA).¹³ HUD contends that the tenants displaced in the acquisition and disposition of government insured buildings or projects do not fit the statutory definitions¹⁴ set forth in URA, and, consequently, that such persons are not entitled to relocation benefits under the Act.¹⁵ Three circuits have agreed with HUD in its assertion that URA does not protect displaced tenants who fall into this category.¹⁶ However, the District of Columbia Circuit has held to the contrary and awarded tenants evicted from HUD-insured apartments full benefits under URA.¹⁷ The Supreme Court granted a writ of certiorari to review the conflict among the circuits.

The Supreme Court, for purposes of argument, consolidated the two appellate cases of *Alexander v. HUD*¹⁸ and *Cole v. Harris*.¹⁹ Final resolution of the conflict rested upon whether the tenants in each of these cases can be characterized as "displaced person," within URA. In order to reach a determination on this issue the Court had to examine the most basic and important element of the

— DETROIT, MICHIGAN, H.R. REP. NO. 92-1152, 92d Cong., 2d Sess. 1-7 (1972).

¹⁰ HUD, pursuant to statutory authority found in sections 202, 203, 220, 221, 235, 236 of the National Housing Act 12 U.S.C. §§ 1706-1713 (1976), insures mortgages for various types of housing. When the owner defaults on the mortgage HUD may foreclose and acquire title to the property which invariably results in the tenants being evicted so that HUD can dispose of the property either by sale at auction or by demolition.

¹¹ 42 U.S.C. §§ 4601-55 (1976).

¹² See *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹³ 42 U.S.C. §§ 4601-55 (1976).

¹⁴ URA § 101(6), 42 U.S.C. § 4601(6) (1976).

¹⁵ See *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁶ *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Harris v. Lynn*, 555 F.2d 1357 (8th Cir. 1977), *cert. denied, sub nom. Harris v. Harris*, 434 U.S. 927 (1977); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

¹⁷ *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁸ 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

¹⁹ 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

statutory definition. The foreclosure acquisition and subsequent disposition by HUD had to be characterized as being for "a program or project undertaken by a federal agency"²⁰ before benefits become available. On April 17, 1979 a unanimous Court found that such mortgage default acquisitions are not "for" a federal program within the meaning of URA. Therefore, the evicted tenants did not qualify as "displaced persons" within the purview of the Act and were denied relocation assistance benefits.²¹ The Court's decision was based primarily on a limited and severely restricted analysis of the legislative history. The plain and commonly understood meanings of words, the broad policy statements of the Act's sponsors and supporters and the very basic underlying human values behind relocation assistance were ignored. In their place the Court referred only to a very narrow and specific portion of the voluminous legislative history to support the decision. The impact of the Court's reluctance to engage in a broader approach to statutory interpretation will be keenly felt by the many in our society whom the Court has historically protected — the poor, the elderly and the minorities.

In order to fully understand the scope of the problem and the issues presented to the Court, one must closely examine a number of sources. A synopsis of the relevant provisions of URA provide the reader with an overview of the financial benefits available for displaced persons under the Act. An examination of the legislative history will aid in the somewhat subjective determination of congressional intent as well as in clarifying the stated purposes and policy of the Act. A discussion of the early administrative and judicial interpretations of the Act will provide a suitable background for an analysis of contemporary problems arising under URA. Finally, in addition to the actual Supreme Court decision this article will examine alternatives that were available to the Court when it analyzed the "displaced persons" provision of URA, and will conclude, contrary to the Court's opinion, that persons displaced by mortgage foreclosures are entitled to benefits under the Act.

II. THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION ACT OF 1970

A. *Provisions of URA: A Synopsis*

In 1970, URA repealed the patchwork of statutory relocation as-

²⁰ URA § 101(6), 42 U.S.C. § 4601(6) (1976).

²¹ *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979); *Cole v. Harris*, 47 U.S.L.W. 4369 (1979).

sistance programs scattered throughout the U.S. Code.²² The rationale for providing any relocation assistance for persons displaced as a result of federal and federally assisted programs is that such persons should not suffer disproportionate injury as a result of programs designed for the benefit of the public as a whole.²³ Federal or federally funded programs are intended to help eliminate urban blight, and the benefit to the general public is obvious. Such benefits, however, should not be obtained at a disproportionate cost to the individual displacee.

URA²⁴ establishes a uniform system of relocation assistance payments for displaced persons. "Displaced persons" are defined in Section 101(6) of the Act as any person who must move from real property as a result of the acquisition of such real property, or as the result of a written order of the acquiring agency to vacate the property, for a program or project undertaken by a federal agency.²⁵ A great many of the legal controversies surrounding URA have arisen from the interpretation of the Section 101(6) eligibility requirements.²⁶ Although this provision has enabled many persons to receive relocation benefits, a substantial number have been excluded from the Act's coverage through the narrow interpretation afforded the provision by HUD and the federal judiciary.²⁷

Those persons found eligible for assistance are entitled to financial compensation in the form of reimbursements for actual and reasonable moving expenses.²⁸ In lieu of this reimbursement, a displacee may receive a moving expense allowance of up to \$300, along with an additional \$200 dislocation allowance.²⁹

²² Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, § 220(a), 84 Stat. 1894 (1970), *repealing* 43 U.S.C. §§ 1231-34 (1970), 42 U.S.C. § 2473(b)(14) (1970), 10 U.S.C. § 2680 (1970), 49 U.S.C. § 1606(b)(1970), 42 U.S.C. § 1465 (1970), 42 U.S.C. § 1415(b)(iii)(8)(1970), 42 U.S.C. § 3074 (1970), 42 U.S.C. §§ 3307(b), (c) (1970), 23 U.S.C. §§ 501-511 (1970).

²³ See 42 U.S.C. § 4621 (1976).

²⁴ The Act is divided into three major sections. Title I, *id.* §§ 4601-03 includes general provisions and definitions; Title II, *id.* §§ 4621-38 deals with Uniform Relocation Assistance; and Title III, *id.* §§ 4651-55 relates to a Uniform Real Property Acquisition Policy. For purposes of the analysis in this article we will be concerned only with Titles I and II. Title III does not relate to the questions presently at issue.

²⁵ 42 U.S.C. § 4601(6)(1976).

²⁶ *Id.*

²⁷ See *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

²⁸ 42 U.S.C. § 4622(a)(1976).

²⁹ *Id.* § 4622(b).

There are also replacement housing benefits available to both tenants and owners. A tenant who has occupied the acquired premises for a period of at least ninety days prior to the initiation of negotiations for acquisition is additionally entitled to upwards of \$2,000, to cover the down payment and other expenses incidental to the purchase of a decent, safe and sanitary dwelling.³⁰ If such a tenant is willing to personally match an amount in excess of \$2,000, the government will extend the maximum to \$4,000.³¹ Should the tenant choose not to purchase a home, there is a maximum of \$4,000 available over a four year period to cover the difference between the rental price of the unit from which the tenant was displaced and the rental price of a decent, safe and sanitary dwelling.³²

Any homeowner who is displaced and who has acquired the property at least 180 days prior to the initiation of negotiations for HUD acquisition is entitled to a sum equal to the difference between the compensation price of the property and a comparable replacement dwelling.³³ Such a displaced owner is also entitled to compensation for the increased interest costs incurred in financing the new purchase, as well as certain closing costs.³⁴ The total of all benefits cannot exceed \$15,000 to any one person.³⁵

In addition, for both displaced owners and tenants there are guarantees of relocation assistance advisory services.³⁶ Should a sufficient supply of replacement housing to accommodate the displacees be lacking, the federal agency must either arrange for the construction or purchase of such replacement housing with federal funds, or abandon the relocation plan.³⁷

The financial benefits available seem minimal. The harsh reality of the situation becomes clear when one considers that the majority of people displaced by government action are the disadvantaged of our society who can least afford any disruption. The financial and emotional impact of a forced move on low-income persons and families can be enormous. Compounding the problem is a lack of standard housing at prices or rents that low-or moderate-income fami-

³⁰ *Id.* § 4624.

³¹ *Id.* § 4624(2).

³² *Id.* § 4624(1).

³³ *Id.* § 4623.

³⁴ *Id.*

³⁵ *Id.* § 4623(a)(1).

³⁶ *Id.* § 4625.

³⁷ *Id.* § 4626.

lies can afford.³⁸ The difficulty of this situation is felt even more acutely by the elderly, large families and non-white displacees.³⁹ However, despite the fact that the financial benefits do not seem great, they do somewhat reduce the burden of moving.

In light of the judicial and administrative interpretations to date it appears that the task of providing an equitable remedy to the plight of these displaced persons was not completed by the enactment of URA.⁴⁰ Certainly with URA came a welcome pattern of uniformity regarding federal relocation benefits.⁴¹ However, it is also true that these uniform benefits have been denied to a large and growing number of economically disadvantaged inner city residents displaced from their homes and communities.⁴² This denial of benefits is the result of a narrow interpretation given to the Act's eligibility provisions by the responsible government agencies,⁴³ an interpretation which is generally supported by the federal courts,⁴⁴ and which has now been approved by the Supreme Court.⁴⁵

The narrow interpretation of URA's eligibility requirements by both HUD and the federal courts does not seem to have any foundation within the Act itself. There is no limiting language on the face of the statute nor any indication that agencies are to unilaterally limit the reach of the Act. Furthermore, an examination of the legislative history will show that such a narrow interpretation actually contravenes congressional intent to provide a broad remedial statute.

B. Legislative History, Policy and Responses to Administrative Interpretation

As a basic principle, statutory interpretation begins with the language of the act itself. Such language should be read as it is com-

³⁸ HOUSE COMM. ON PUBLIC WORKS, THE STUDY OF COMPENSATION AND ASSISTANCE FOR PERSONS AFFECTED BY REAL PROPERTY ACQUISITION IN FEDERAL AND FEDERALLY ASSISTED PROGRAMS, 88th Cong., 2d Sess. 105-12 (1964) [hereinafter cited as STUDY OF COMPENSATION].

³⁹ *Id.*

⁴⁰ See *Moorer v. HUD*, 561 F.2d 175 (8th Cir. 1977); *Dawson v. HUD*, 428 F.Supp. 328 (N.D. Ga. 1976); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

⁴¹ 42 U.S.C. § 4621 (1976).

⁴² See *Alexander v. HUD*, 565 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979). See also *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979).

monly understood, and when the interpretation is neither absurd on its face nor inconsistent with the statute's evident purpose, and does not lead to absurd or futile results, the court's search is ended.⁴⁶ The serious conflict over eligibility requirements in Section 101(6) of URA cannot be resolved in such a simple manner. The language pertaining to "a program or project undertaken by a Federal agency"⁴⁷ is not so clear and unambiguous as to permit a proper determination without resorting to other sources. Courts have traditionally sought guidance from a statute's legislative history when faced with problems of ambiguous construction,⁴⁸ and here an independent examination of the legislative history of URA is likewise useful.

1. Policy Considerations Behind the Passage of URA

The Housing Act of 1954 was the first congressional effort to confront the hardships faced by displaced persons, and provided financial assistance for building low-cost replacement housing.⁴⁹ The scope of congressional concern at this very early stage in the development of remedial legislation is evident. The Senate Report accompanying the Housing Act of 1954 stated:

Eligible displaced families would include families which are required to move because of any form of governmental action, such as land acquisition by a public body, closing or vacating of dwellings by public officials, or the eviction of families from public housing because of their income.⁵⁰

Following the Housing Act of 1954, Congress continued to pass legislation designed to provide a measure of relief to people displaced by governmental actions.⁵¹

In the 1960's there were two major governmental programs providing relocation assistance benefits to displacees. These two programs were specifically designed to aid those persons affected by the two traditional causes of government-initiated displacement: the

⁴⁶ *United States v. American Trucking Assn's.*, 310 U.S. 534, 543 (1940).

⁴⁷ 42 U.S.C. § 4621(6)(1976).

⁴⁸ *See, e.g., Harrison v. Northern Trust Co.*, 317 U.S. 476, 479 (1943); *United States v. American Trucking Assn's.*, 310 U.S. 534, 543 (1940).

⁴⁹ 12 U.S.C. § 1715(L) (1976).

⁵⁰ S. REP. NO. 1472, 83d Cong., 2d Sess., *reprinted in* [1954] U.S. CODE CONG. & AD. NEWS 2748.

⁵¹ *See National Housing Act of 1956* § 305, Pub. L. No. 1020, 70 Stat. 1091, 1100 (1956); Pub. L. No. 85-433, 72 Stat. 152 (1958).

construction of new federal highways through urban areas,⁵² and urban renewal housing projects carried out under the auspices of HUD.⁵³ In addition, there were also a number of less significant programs administered by various government agencies which undertook projects that resulted in population displacement.⁵⁴ For example, the Secretary of the Interior was authorized to reimburse owners and tenants of land acquired for the construction, maintenance or operation of developments under his jurisdiction,⁵⁵ and the Secretary of Defense was authorized to provide reimbursement to landowners and tenants for expenses incurred in moving from real property acquired for a public works project under his auspices.⁵⁶ The Secretary of Transportation was not permitted to fund any project under the Urban Mass Transportation Act unless an adequate relocation program was made available.⁵⁷

Each of these programs had its own eligibility requirements as well as its own system of compensation.⁵⁸ These disparate benefit provisions resulted in a haphazard and inconsistent pattern in the availability of relocation assistance. Persons displaced by one government project could conceivably receive less aid than similarly situated persons who were displaced by a different agency.⁵⁹ This inequality of treatment was the stimulus behind the passage of URA.⁶⁰

In 1961, Congress decided to evaluate its piecemeal approach to the plight of displaced persons.⁶¹ A congressional subcommittee report determined that the lack of uniformity within the government programs was detrimental and that a uniform approach to the problem was needed.⁶² As the report stated:

The amount of disruption caused by Federal and federally assisted programs is astoundingly large. The accelerated pace of Government activ-

⁵² See Highway Relocation Assistance Act, Pub. L. No. 91-605, 84 Stat. 1724 (1970).

⁵³ See 42 U.S.C. § 1455(h) (1976).

⁵⁴ See, e.g., 43 U.S.C. §§ 1231-34 (1970), 42 U.S.C. § 2473 (1976), 10 U.S.C. § 2680 (1976), 49 U.S.C. § 1606(b) (1970), 42 U.S.C. § 1465 (1976). URA repealed the provisions in 10 U.S.C. § 2680 (1976) and 42 U.S.C. § 1465 (1976).

⁵⁵ 43 U.S.C. § 1231 (1970) (repealed 1971).

⁵⁶ 10 U.S.C. § 2680 (1976) (repealed 1970).

⁵⁷ 49 U.S.C. § 1606 (1970).

⁵⁸ See, e.g., 42 U.S.C. § 2473 (1970), 49 U.S.C. § 1606 (1970), 10 U.S.C. § 2680 (1970), 43 U.S.C. §§ 1231-34 (1970), 42 U.S.C. § 1465 (1970).

⁵⁹ *Id.*

⁶⁰ See 42 U.S.C. § 4621 (1976).

⁶¹ STUDY OF COMPENSATION, *supra* note 38.

⁶² *Id.* at 105-12.

ity, . . . make[s] any lessening of current activity in the foreseeable future highly unlikely.

* * *

Concern for the effects of displacement by Government action is consistent with the policy of the Nation to assure economic and social opportunity for every citizen. Economic costs of displacement should be borne by the public on a uniform basis in all programs. . . .⁶³

The first uniform bills, introduced in 1965, addressed the inconsistent treatment of displaced persons and the inadequate assistance provided.⁶⁴ Senator Edmund Muskie of Maine, in introducing S.1 (which would become URA), stated the concerns of all those who supported the bill:

[A] major item of unfinished business . . . is the passage of legislation assuring *consistent* and *fair* treatment of those who are uprooted from their homes and places of business by projects carried out by the Federal Government. . . .

* * *

When called upon to make this adjustment in their personal lives for the public good, such persons must be able to turn to the responsible agency . . . and be assured of the help they need to reestablish themselves in homes no less satisfactory than those they were forced to leave.⁶⁵

As each new problem was presented and examined, sections of the original bill were expanded to assure that the congressional intent would be carried out.⁶⁶ The concern for persons displaced by projects designed to benefit the public as a whole was repeatedly expressed during deliberations over URA.⁶⁷ The House Report stated:

[This legislation] . . . provides a humanitarian program of relocation payments, advisory assistance, assurance that comparable, decent, safe, and sanitary replacement housing will be available for displaced persons prior to displacement . . . [a]nd, perhaps most important of all, it gets to the heart of the dislocation problem by providing the

⁶³ *Id.*

⁶⁴ See S.1201, S.1681, H.R. 10212 and H.R. 11869, all introduced in 1965.

⁶⁵ 115 CONG. REC. 772 (1969) (emphasis added).

⁶⁶ Senator Baker's concern for displacement of outdoor advertising was covered in 42 U.S.C. § 4601(7)(d)(1976); Senator Tyding's concern for "Mom and Pop" stores was covered in 42 U.S.C. § 4622 (c)(1976); Representative Koch's concern for a special New York City situation is covered in the uncodified Section 219 (84 Stat. 1894, 1903). See Brief for Petitioners at 13, *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979).

⁶⁷ See 115 CONG. REC. 31534 (1966) (remarks by Sen. Tydings); 116 CONG. REC. 42138 (1970) (remarks by Sen. Percy); 116 CONG. REC. 40167 (1970) (remarks by Rep. Jacobs).

means for positive action to increase the available housing supply for displaced low and moderate income families and individuals.⁶⁸

Senator Percy best summarized the intention of Congress when he said:

In public hearings the unfair treatment, inadequate payment, insufficient relocation assistance provided to those displaced is being brought out. Too often the complaints come from the very people the projects were designed to help, the poor and the elderly living in the inner city. They experience most severely the economic and personal effects of relocation from familiar surroundings. If there are forgotten Americans, surely these people seem to qualify. No public project should result in financial loss or hardship to the people it displaces. Congress did not intend to place undue burdens on those forced to relocate

We must insure that anyone who loses property or a home as a result of a public project receives fair compensation under a uniform set of procedures⁶⁹

The legislative history of URA clearly establishes an overriding congressional interest in providing uniform and equitable treatment for *all* persons displaced by federal action. From the very beginning, however, HUD attempted to limit its responsibilities through a series of narrow and tortured administrative interpretations of the Act.⁷⁰ In an early 1972 case⁷¹ HUD refused to give relocation assistance to families evicted because of rehabilitation work being completed under the auspices of a private developer pursuant to a federally sponsored program. HUD contended that although the construction costs were federally financed, URA did not cover projects undertaken by a private developer.⁷²

⁶⁸ H.R. REP. NO. 91-1656, 91st Cong., 2d Sess., reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5850, 5852.

⁶⁹ *Hearings on S.1 Before The Senate Comm. on Government Operations*, 91st Cong., 1st Sess. 54-55 (1969) [hereinafter cited as *Senate Hearings*].

⁷⁰ Letter from Representative John A. Blatnik, Chairman, Committee on the Public Works to George W. Romney, Secretary, HUD, June 7, 1972, as cited in Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U. L. REV. 552, 552 n.62 (1976).

⁷¹ *Manning v. Romney*, Civil No. 72-1342 (D.C. Cir., Apr. 13, 1972), as cited in Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U. L. REV. 562, 564 n.61 (1976).

⁷² *Id.* The Court did not reach a determination as to whether the Act applies when private parties undertake such a program and acquire property since the tenants in these cases claimed that a federal program caused the displacement. Nor was there any determination as to whether URA would apply when a state or local agency acquires property in a covered program or project.

As one would imagine, such an interpretation by HUD so soon after the Act's enactment drew criticism from the promulgators of the Act who had intended a broader application. Representative John Blatnik, one of the original sponsors, called HUD's position "callous and incomprehensible" and further stated, "[i]n drafting the legislation all of us were concerned that its purpose would not be thwarted by narrow, tortured, legalistic, administrative interpretations."⁷³

In order to alleviate the problems caused by what Senator Howard Baker called "the almost uncanny willingness and ability of government units to find ways around the mandate of the Uniform Act,"⁷⁴ an amendment to URA was proposed.⁷⁵ In support of this amendment Senator Baker argued that "wherever a federal dollar reaches, there lie the rights and benefits guaranteed by the Act."⁷⁶ The proposed amendment, designed to make clear congressional intent that *any* person displaced by *any* undertaking involving the federal government would be due benefits, passed each house but due to other disagreements never went to conference. No further action was taken before the 92d Congress adjourned.

Considering the large and growing number of repossessions resulting from failures in its own mortgage insurance programs,⁷⁷ HUD's narrow interpretation of the statute is not surprising. A broader interpretation would require HUD to provide substantial money payments to many persons now denied benefits. Regardless of this potentially great financial impact on HUD, the posture taken towards those displaced by the failure of various revitalization plans raises serious questions of compliance with congressional intent.

2. History of the Specific Language of URA

Any examination of legislative history can lead to conflicting conclusions. The variety of approaches and the relative importance

⁷³ Letter from Representative John A. Blatnik, Chairman, Committee on Public Works to George W. Romney, Secretary, HUD, June 7, 1972, as cited in Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U. L. REV. 552, 562 n.62 (1976).

⁷⁴ 118 CONG. REC. 12343 (1972).

⁷⁵ *Proposed Amendment to the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970: Hearing on S1819 and Related Bills Before the Subcomm. on Roads of the House Comm. on Public Works*, 92d Cong., 2d Sess. 58 (1972).

⁷⁶ 118 CONG. REC. 12343 (1972).

⁷⁷ See Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U. L. REV. 552, 552 n.1 (1976).

accorded to broad principles of intent as opposed to isolated and seemingly more specific indications of intent, are factors that can only add to these potential conflicts. URA's legislative history has not proven to be immune from these inherent problems of approach. The Supreme Court's analysis of the legislative history of URA led to its conclusion that the intended scope of the assistance program was closer to the government's narrow application position than the broader position espoused by the tenants. However, the Court did recognize that the "statutory language is susceptible of either construction."⁷⁸ Seemingly, one can therefore legitimately argue that the question before the Court lent itself to a broad subjective determination rather than a technical and specific approach.

The analysis engaged in by the Court focused entirely upon the historical evolution of the language contained in the Section 201 Declaration of Policy⁷⁹ and the history of the specific statutory definition of "displaced person." There was no reference to the broader, more general and subjective policy and intent underlying relocation assistance as indicated in the earlier portion of this section.

In order to determine the purpose of URA, the Court turned to the language of a proposed 1964 "Fair Compensation Act," finding it to be the basis for most of the provisions ultimately codified in URA.⁸⁰ The declared purpose of this early proposal was to afford "persons affected by the *acquisition* of real property in federal and federally assisted programs . . . fair and equitable treatment on a basis as nearly uniform as practicable."⁸¹ The Court felt that this early and unadopted provision unambiguously reflected a *limited* congressional purpose in the revision of relocation assistance legislation. The initial intent was only to provide better and more uniform assistance to those people whose property was *acquired* for federal purposes. The Court found no intention to extend assistance beyond this limited group to all persons somehow displaced by governmental programs.⁸² As further evidence of this congressional policy of providing benefits to displacements caused only by acquisitions of property for a government program or project, the Court stated that this basic objective remained unchanged by any specific language as Congress considered a number of bills derived from the

⁷⁸ 47 U.S.L.W. 4369, 4372 (1979).

⁷⁹ 42 U.S.C. § 4621 (1976).

⁸⁰ 47 U.S.L.W. 4369, 4373 (1979).

⁸¹ STUDY OF COMPENSATION, *supra* note 38, at 147.

⁸² 47 U.S.L.W. 4369, 4372 (1979).

early proposal.⁸³ The Court directed minimal attention to the deletion by the House of Representatives of the references to "acquisitions of real property" in the adopted version of Section 201 which now refers to "persons displaced as a result of federal and federally assisted programs."⁸⁴ According to the Court the suggestion that all such persons are the intended beneficiaries of the Act as adopted is clearly inconsistent with prior versions of the Section, all of which specifically relate to displacement caused by acquisition.⁸⁵ The Court then turned its attention to prior versions of the Section 101(6)⁸⁶ definition of displaced persons. An examination of the early provisions indicated to the Court that when Congress added the second part of the statutory definition,⁸⁷ commonly known as the "written order clause," the intent was solely to delineate more precisely the persons eligible for assistance.⁸⁸ The Court maintains that the legislative history reveals no intent to extend relocation benefits beyond the context of a government acquisition. The clause is only to ensure that assistance is available for a distinct group who are directed to vacate because of a contemplated but uncompleted acquisition.⁸⁹

The Court's examination of URA's legislative history ended at this point. No mention was made of the underlying human values and concerns that led to the passage of URA. There was no attempt to discern the broader implication of the Act, only the very detailed analysis of the language as it evolved from *prior* versions. However, when construing an act such as URA the humanitarian concerns as voiced by the promulgators of the Act should be kept foremost in mind. Congressional concern for the hardships experienced by *all* persons displaced through governmental action demands a less restrictive interpretation of the Act; one that is faithful to the overriding purpose Congress sought to achieve. In order to more fully understand the Supreme Court's decision, it is now appropriate to examine how the federal courts have actually interpreted the eligibility requirements of the Act in the past.

⁸³ *Id.*

⁸⁴ 42 U.S.C. § 4601(6) (1976).

⁸⁵ 47 U.S.L.W. 4369, 4373 (1979).

⁸⁶ 42 U.S.C. § 4601(6) (1976).

⁸⁷ See Section II C Early Judicial Interpretation of Eligibility, *infra* for a discussion of § 101(6).

⁸⁸ 47 U.S.L.W. 4369, 4374 (1979).

⁸⁹ *Id.*

C. *Early Judicial Interpretation of Eligibility*

With so much depending on the interpreted breadth of the eligibility requirements in Section 101(6) of URA,⁹⁰ it comes as no surprise that this provision is the most litigated section of the Act. An examination of early cases shows that the question of eligibility has arisen in a variety of contexts and fact patterns throughout the years since the Act's passage in 1970. The courts have generally upheld HUD's narrow and strict construction of Section 101(6).⁹¹ The most recent context in which litigation concerning eligibility requirements has arisen is where the federal government has (through HUD) acquired property by the foreclosure of defaulted mortgages insured under the National Housing Act.⁹² The majority of these decisions have also tended to deny relocation benefits to those persons displaced by HUD's acquisition by foreclosure.

Courts have begun their inquiry as to whether evicted tenants are, in fact, "displaced persons" under URA by examining the language of Section 101(6) of the Act. The provision sets out two specific eligibility requirements. A "displaced person" is one who moves from real property *either* (1) as a result of the acquisition of real property, for a federal or federally assisted program, *or* (2) as the result of a written order of the acquiring agency to vacate the property for a federal or federally assisted program.⁹³ These two categories are disjunctive in that a person who falls within either will be entitled to relocation benefits under the Act.⁹⁴

An examination of the cases decided under the statute indicates that the courts and the litigants have often termed the first branch of this dual definition as the "acquisition" clause⁹⁵ while the second

⁹⁰ 42 U.S.C. § 4601(6) (1976).

⁹¹ See *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Harris v. Lynn*, 555 F.2d 1357 (8th Cir. 1977); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

⁹² 12 U.S.C. §§ 1701, 1706c-1715L (1976).

⁹³ The Section reads in full:

The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property on which such person conducts a business or farm operation, for such program or project.

42 U.S.C. § 4601(6) (1976).

⁹⁴ *Id.*

⁹⁵ See *Alexander v. HUD*, 555 F.2d 166, 169 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979);

branch has been termed the "written order" clause.⁹⁶ The distinction does not seem to serve much purpose except to provide both the government and the tenants with an argument to distinguish adverse decisions. Either litigant can argue that a specific case should not carry precedential weight since it was decided under the "other" branch of the definition. In reality, the cases address the same questions and are not fundamentally distinguishable.⁹⁷ The distinction tends to downplay the more critical issue of whether there exists a federal or federally assisted program or project, a necessary requirement under either branch of the definition.

Unfortunately the language of the Act does not provide much guidance regarding this critical issue in that there is no definition of "program or project" within the Act's general provisions. Importantly, however, there is no indication within the Act that any particular program or project is to be excluded from the coverage. This lack of limitation, when examined together with the legislative history, is the primary indication favoring the broad concept that *any* acquisition of real property by a federal agency which causes people to be displaced from their homes should result in benefits being made available to those displaced.⁹⁸ However, until the case of *Cole v. Harris*⁹⁹ the courts have not been willing to interpret the eligibility requirements so broadly. To the contrary, they have interpreted the language of the provision to strictly limit eligibility for the Act's benefits.¹⁰⁰

One early lower court decision, *Feliciano v. Romney*,¹⁰¹ interpreted Section 101(6) so as not to provide benefits for tenants displaced during the period of time between initial approval by HUD of the proposed renewal project and the actual granting of funds. There the project's sponsors, with HUD's approval, evicted the tenants prior to final government approval of the project. The court held that prior to the execution of the contract, the project could not be considered as "one undertaken by a federal agency" thereby

Caramico v. HUD, 509 F.2d 694 (2d Cir. 1974).

⁹⁶ See *Cole v. Harris*, 571 F.2d 590, 595 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979); *Alexander v. HUD*, 555 F.2d 166, 169 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

⁹⁷ See *Alexander v. HUD*, 555 F.2d 166, 169 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

⁹⁸ See Brief of Petitioners at 18, *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979).

⁹⁹ *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁰⁰ See *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369, (1979); *Harris v. Lynn*, 555 F.2d 1357 (8th Cir. 1977); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

¹⁰¹ 363 F. Supp. 656 (S.D.N.Y. 1973).

removing the displaced tenants from the protection of the Act.¹⁰²

This early narrow interpretation of eligibility was subsequently extended to exclude payment of benefits to those displaced by the sale of property to a private developer.¹⁰³ In *Jones v. HUD*, low-income tenants of a HUD subsidized housing project were evicted with HUD's approval so that the building could be demolished prior to sale of the land at auction. The court found that HUD's proposed sale of the land to a private developer was not for a "federal program" within the contemplation of URA.¹⁰⁴

1. The Foreclosure Cases

In the earliest case regarding displacement through a mortgage foreclosure, HUD continued its policy of strictly construing the eligibility requirements of URA by refusing relocation payments to persons displaced as the result of repossessions. The Second Circuit in *Caramico v. HUD*¹⁰⁵ supported HUD's position by holding that mortgage insurance acquisitions were not programs covered by URA.¹⁰⁶ The plaintiffs were low-income tenants of mortgaged properties insured by the Federal Housing Administration (FHA), a subdivision of HUD. Following default by the owner and subsequent foreclosure, the mortgagee evicted the tenants in order to recover on the mortgage insurance.¹⁰⁷ HUD maintained that its mortgage insurance program and foreclosure provisions could not be considered an acquisition that would trigger the application of URA. The tenants reasoned that since HUD's requirement of vacant delivery was designed to aid in the eventual disposition of the property by rehabilitation or some other manner, the mortgage insurance program was similar to an urban renewal program. As there was no question that those displaced by a federal urban renewal project were eligible for URA benefits, the tenants urged that those displaced by the insurance program should likewise be eligible.

The court stated that although there may well have been an acquisition, the tenants failed to prove that the acquisition was "for

¹⁰² *Id.* at 672.

¹⁰³ 390 F. Supp. 579 (E.D. La. 1974).

¹⁰⁴ *Id.* at 583.

¹⁰⁵ 509 F.2d 694 (2d Cir. 1974).

¹⁰⁶ *Id.* at 699.

¹⁰⁷ Under FHA regulations for a mortgagor to recover the insurance proceeds the property must be tendered unoccupied to the FHA. 24 C.F.R. § 203.381 (1974).

a program or project undertaken by a federal agency. . . ."¹⁰⁸ According to the Second Circuit, there is a crucial difference between mortgage insurance acquisitions and acquisitions under other programs covered by URA:

[T]he Act contemplates normal government acquisitions, which are the result of conscious decisions to build a highway or housing project or hospital Default acquisitions by the FHA, however, embody no conscious governmental decision at all The only voluntary action taken by the government is the decision to require unoccupied delivery before making the insurance payment. The acquisition itself, however, is clearly involuntary and in response to the default [R]andom acquisitions by the FHA of defaulted property are not acquisitions for a program or project undertaken by a federal agency.¹⁰⁹

The Eighth Circuit followed the strict construction line of reasoning in construing Section 101(6) in *Harris v. Lynn*.¹¹⁰ That case involved a suit for benefits under URA by former tenants of a housing project constructed by a city housing authority. The project was financed with development funds from the then Public Housing Administration along with yearly contributions from the government to retire the original loan. Title to the property remained at all times with the City Housing Authority. The worsening financial condition of the project proved to be a severe strain on the Housing Authority and adversely affected its ability to maintain other healthy projects. With the concurrence of HUD the Authority terminated the leases of the remaining tenants and closed down the project. The buildings were then demolished with funds provided by HUD.¹¹¹

The Court of Appeals affirmed and adopted the District Court's finding¹¹² that "[u]nder any realistic view . . . the plaintiffs were not displaced 'as a result of the *acquisition*' of the property, for a program undertaken with federal financial assistance or by a federal agency."¹¹³ The Appeals Court reasoned that the only acquisition with federal financial assistance had been the original acquisition by the City Housing Authority, and the plaintiffs were in no way

¹⁰⁸ *Caramico v. HUD*, 509 F.2d 694, 697 (2d Cir. 1974).

¹⁰⁹ *Id.* at 698-99.

¹¹⁰ 555 F.2d 1357 (8th Cir. 1977), *cert. denied*, 434 U.S. 927 (1977).

¹¹¹ *Harris v. Lynn*, 411 F. Supp. 692, 693-94 (E.D. Mo. 1976).

¹¹² *Harris v. Lynn*, 555 F.2d 1357, 1359 (8th Cir. 1977), *cert. denied*, 434 U.S. 927 (1977).

¹¹³ *Harris v. Lynn*, 411 F. Supp. 692, 694 (E.D. Mo. 1976).

displaced as a result of that acquisition.¹¹⁴ Unlike the previous cases there was no need to reach the question of whether there existed a federal program or project.

In light of the generous provisions of URA¹¹⁵ and the legislative history of the Act,¹¹⁶ these early judicial decisions strictly construing the eligibility requirements seem to be at variance with the perceived congressional intent to provide a broadly applied remedial statute. The two most recent cases just decided by the Supreme Court indicate that HUD has not shifted its position regarding the applicability of URA to persons displaced through mortgage foreclosure. The D.C. Circuit's decision in *Cole v. Harris*,¹¹⁷ in rejecting the Seventh Circuit's reasoning in *Alexander v. HUD*,¹¹⁸ was the first indication that the federal judiciary was prepared to dispute the HUD-proposed interpretation of the Act. At this point, detailed examination of the fact patterns and issues raised in both cases will provide a thorough understanding of the contemporary problem.

III. THE UNITED STATES SUPREME COURT CASES

A. *Alexander v. HUD and Harris v. Cole: A Statement of Facts and Issues*

The petitioners in *Alexander v. HUD*¹¹⁹ were former tenants of the Riverhouse complex located in Indianapolis, Indiana. The project was originally constructed by a private, non-profit corporation, Riverhouse Apartments, Inc., which also was the original mortgagor. This corporation financed the complex through a mortgage insured and subsidized by HUD.¹²⁰ In 1970, Riverhouse Apartments, Inc. defaulted on the loan. The mortgagee (Government National Mortgage Association) assigned the mortgage to HUD in return for the

¹¹⁴ *Id.*

¹¹⁵ See Section II (A), *supra*.

¹¹⁶ See Section II (B), *supra*.

¹¹⁷ 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹¹⁸ 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

¹¹⁹ *Id.* As we turn to the analysis of *Alexander* and *Cole* it is necessary to keep in mind the potential significance of these cases. The federal government has become one of the largest owners of inner city property through this type of default in the mortgage insurance program (*Caramico v. HUD*, 509 F.2d 694, 698 (2d Cir. 1974)). A finding in favor of the tenants potentially will extend the Act's benefits to a large category of heretofore ineligible persons, and consequently require HUD to expend many unanticipated dollars.

¹²⁰ This mortgage insurance was secured under § 221(d)(3) of the National Housing Act as amended, 12 U.S.C. § 1715(L)(d) (1976). Upon completion of Riverhouse, the interest rate was reduced to 3 percent and the mortgage was purchased by the Government National Mortgage Association.

proceeds of the mortgage insurance. For the next three years HUD chose to work with the owner in an attempt to cure the default, but such efforts proved unsuccessful. Faced with the continuing default, HUD initiated a foreclosure action in the United States District Court.¹²¹ In June, 1974, a foreclosure decree was entered ordering that Riverhouse be sold and the proceeds be applied to the balance due on the mortgage.¹²² HUD purchased the property itself at the court ordered sale.

HUD employed a management firm to operate and manage Riverhouse while the agency evaluated the future of the complex in light of the general condition of the property and the needs of the surrounding low- and moderate-income community. The project had fallen into deplorable condition. Feeling that the unsafe conditions were a threat to health and safety and that the costs of bringing the building into a safe and decent condition were tremendous, HUD decided to close the project and evict the tenants.¹²³ Notices to quit were served on all the tenants,¹²⁴ and by February, 1975 Riverhouse was vacant. No relocation assistance whatsoever had been provided for the tenants. The Riverhouse tenants sought relocation benefits as provided for by URA, asserting that the order to vacate Riverhouse made them eligible as "displaced persons" within the meaning of the Act. The District Court held that URA was not applicable to this category of tenants and the Seventh Circuit affirmed.¹²⁵

The plaintiffs in *Harris v. Cole*¹²⁶ were former tenants of Sky Tower, a multi-family housing project in Washington, D.C. completed in the 1950's. In 1970, the Housing Development Corporation

¹²¹ *Alexander v. HUD*, 555 F.2d 166, 167 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

¹²² *Id.*

¹²³ HUD did have alternative avenues of approach under 12 U.S.C. § 1713(L). There the department is granted authority to renovate and modernize the property as well as to rehabilitate and sell it to a private developer or public housing authority.

¹²⁴ The letters ordering the tenants to vacate read as follows:

We regret to inform you that we have been advised by the Department of Housing and Urban Development, that due to the unsafe conditions of the buildings, it has become necessary to close Riverhouse Towers Apartments.

All residents must vacate the premises by December 31, 1974.

We are sorry for any inconveniences; if we can be of any assistance to you in relocating, please feel free to call our office, telephone 635-3371.

Thank you in advance for your cooperation. Federal Property Management Corporation.

Reprinted in Petitioners Brief for Writ of Certiorari, App. at 8, *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979).

¹²⁵ *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

¹²⁶ 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

(HDC)¹²⁷ purchased the complex and secured a mortgage insured by HUD under Section 236 of the National Housing Act.¹²⁸ The intent of the sponsor, HDC, was to rehabilitate Sky Tower into a complex of larger apartments to serve low- and moderate-income families.¹²⁹ HUD agreed to provide three branches of financial support — the initial mortgage, a subsidized interest rate on the mortgage and rent supplement payments to sixty households.¹³⁰

The original contractor for the rehabilitation defaulted in early 1972. A second contractor was retained by HDC after HUD was asked to increase its mortgage insurance commitment to cover increased costs. Later in 1972 this second contractor stopped work with rehabilitation only partially completed. HUD exercised its rights under the mortgage insurance contract by foreclosing this mortgage. The agency acquired title to Sky Tower through the foreclosure sale in 1973. HDC had urged HUD to maintain the insurance subsidy and rent supplements while it acted as its own contractor. HUD refused to do so on the basis that the cost overrun would increase rents to such a level that the project could not be successfully operated pursuant to Section 236 of the National Housing Act.¹³¹ In effect, HUD had “insisted that the property be foreclosed”¹³² even though another option was available.

HUD hired a management firm to operate Sky Tower and new month to month leases were executed with the tenants. At the same time HUD began to study alternatives relating to the disposition of the property. In 1974, the agency, having rejected further rehabilitation as futile, decided to demolish Sky Tower and sell the land to developers for the construction of single family homes. Pursuant to this decision, the management firm sent notices to the tenants informing them of HUD’s decision. The tenants were given thirty days notice to vacate the premises.¹³³ HUD determined that these tenants were not displaced persons within the purview of URA.¹³⁴ Although

¹²⁷ HDC was a non-profit corporation formed in 1965 to promote the development of housing for low income families in the District of Columbia. HDC formed a non-profit subsidiary corporation, Anacostia No. One, Inc., to act as the formal holder of title. Brief for Respondents at 3, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979).

¹²⁸ 12 U.S.C. § 1715z-1(j) (1976).

¹²⁹ *Cole v. Harris*, 571 F.2d 590, 592 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹³⁰ *Id.*; see 12 U.S.C. § 1715z-1 (1976).

¹³¹ See Brief for Respondents at 6, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979).

¹³² 389 F. Supp. 99, 101 (D.D.C. 1975).

¹³³ *Cole v. Harris*, 571 F.2d 590, 592 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹³⁴ *Id.*

the agency did provide some relocation assistance, such aid was considerably less than what was available under the Act.¹³⁵

The District Court held that the Sky Tower residents were, in fact, displaced persons and eligible for the benefits provided by URA. The Court of Appeals affirmed.¹³⁶

This examination of the fact patterns of *Alexander* and *Cole* compels the conclusion that these two cases are remarkably similar in nature. An attempt to distinguish these cases would have been folly. Thus, the inescapable conclusion is that either the Court of Appeals for the Seventh Circuit incorrectly decided the *Alexander* case¹³⁷ or the divided District of Columbia Circuit Court¹³⁸ overstepped the bounds of URA in the *Cole* decision. The Supreme Court recognized the similarities between *Alexander* and *Cole*, consolidated the two cases for hearing, and concluded that the District of Columbia Circuit had incorrectly interpreted the Act.

B. *United States Supreme Court Decision*

The Court's examination of the language of the Act and the legislative history led it to conclude that the original congressional intent was to provide relocation assistance only when property was acquired for federal programs. Congress did not intend to extend benefits beyond that very limited acquisition context to cover all displaced persons. Therefore, the Court found that Section 101(6) and the written order clause were of limited scope. The latter was designed only to insure benefits to those people ordered to vacate because of a proposed acquisition that was never consummated.

The essence of the decision was that the written order clause contains two causal requirements. First, the written vacate orders must result directly from an actual or proposed acquisition. Second, the acquisition itself and not only the written orders must be "for"

¹³⁵ *Cole v. Lynn*, 389 F. Supp. 99 (D.D.C. 1975). HUD provided some assistance including \$300 in moving expenses to certain departing tenants. However, it did not comply fully with Title II of URA.

¹³⁶ *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹³⁷ *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *see Moorer v. HUD*, 561 F.2d 175 (8th Cir. 1977); *Davison v. HUD*, 428 F. Supp. 328 (N.D. Ga. 1976); *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974) for other decisions in accord with *Alexander v. HUD*.

¹³⁸ *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979). The D.C. Circuit did not reach a unanimous decision in *Cole v. Harris*. Judge Wilkey authored a lengthy and comprehensive dissent which is a fine analysis in support of the position taken by HUD. *Id.* at 601.

a federal program or project. Thus, no benefits are available if the agency, at the time of acquisition, did not *intend* to use the property for a program or project. A later developed disposition program will not meet the causality requirements. In neither of the two cases did the Court find a sufficient relationship between the HUD acquisitions and the subsequent orders to vacate to bring the tenants within the purview of the Act.¹³⁹

Unfortunately, the Court's analysis did not include any consideration of the broad overview of the Act and its general humanitarian purpose. Nor was there any consideration of the impact of its narrow construction on the Act itself or the people who would be affected. Rather, the Justices felt constrained by some very limited language of previous unenacted versions of the Act. Seemingly, a classic example of form over substance.

C. *The Issues*

The tenants in each of the cases before the Court sought benefits under the second branch of the Section 101(6) definition of displaced person.¹⁴⁰ When broken down into simple requirements it is apparent that in order for a tenant to meet the statutory language of "displaced person" he must (1) move, (2) as a result of a written order to vacate, (3) given by the acquiring agency, and (4) the written order to vacate must be for a program or project undertaken by a federal agency or with federal financial assistance.

There is little dispute that the first two criteria were met by the tenants in both cases. The lower courts and litigants seemingly agreed that (1) the notices sent to the tenants constituted "[t]he written order of the acquiring agency to vacate real property"; and (2) the tenants moved from the property as a result of these orders.

Four issues were in dispute before the Supreme Court. The first, which was initially raised in *Cole v. Harris*, questions whether HUD actually was an "acquiring agency" by having come into possession through the mortgage defaults.¹⁴¹ The question was raised in connection with the timing of the written orders to vacate: HUD contended that it was not an "acquiring agency" within the meaning of the statute since the written orders to vacate are issued at some time

¹³⁸ *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979).

¹⁴⁰ 42 U.S.C. § 4601(6) (1976).

¹⁴¹ The government raised this issue for the first time in this case. Generally courts have searched for existence of a federal program or project and have not found it necessary to address the question of whether HUD was an "acquiring agency."

subsequent to acquisition rather than *contemporaneously* with or *prior* to the acquisition. This was one of the issues upon which the Court based its decision.

The next two issues before the Court related to the fourth criteria of the definition of "displaced persons," that is, the requirement that the orders to vacate pursuant to the acquisition be for a "program or project" within the contemplation of URA. The first of these issues raised was whether URA contemplates "program or project" to include *all* government acquisitions or only those found to be "voluntary." The Court made only passing reference to this issue in its decision. The second issue was whether URA requires *only* that the written orders to vacate be for a federal program or project or whether the original acquisition also must be for such a purpose. The Court did see this question as having import in the ultimate decision. The final and most basic issue before the Court was whether a mortgage foreclosure is a program or project within the meaning of URA. Unfortunately, the Court did not examine this issue in depth. Such an examination became unnecessary when the Court found Section 101(6) to require a written order be issued pursuant to an acquisition and that a mortgage default acquisition would not satisfy the causality requirements of the provision.

Prior to an analysis of these issues it should be noted that the Court, in framing these issues, correctly recognized that in neither of the two cases did the tenants claim coverage under the "acquisition" clause of Section 101(6). The tenants eligibility turned solely on the meaning of the 101(6) definition's "written order clause." Specifically, the Court saw that eligibility depended upon the interpretation of two elements in the statutory definition — "acquiring agency" and "for a program or project."¹⁴²

1. Timing of Written Orders To Vacate

The Supreme Court decided that a determination as to whether URA requires that the written orders to vacate be issued contemporaneously with a presently occurring acquisition or prior to an anticipated acquisition was an important factor in the case. The government maintained that in order for a person to be displaced it is necessary that the written order be issued in connection with an acquisition or an anticipated acquisition.¹⁴³ In other words, HUD

¹⁴² *Alexander v. HUD*, 47 U.S.L.W. 4369, 4371 (1979).

¹⁴³ Petitioners Brief for Writ of Certiorari at 7, 8, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979).

contended that the phrase "acquiring agency" in Section 101(6) should be read as "to denote an agency that is engaged in or proposing to engage in an acquisition."¹⁴⁴ The tenants contended that the proper reading of "acquiring agency" includes an agency that has acquired the property at any time in the past.

Judge Wilkey, dissenting in *Cole*, agreed with HUD and intimated that the written orders to vacate must be issued in conjunction with the actual acquisition and that the "acquiring agency" requirement is not met in situations where the government already owns the property, as in the two cases before the Court.¹⁴⁵ The contention is that the written order clause is to be read *conjunctively* with the acquisition clause, leading to the result that the written order to vacate must be connected to the original acquisition.¹⁴⁶ In fact, the argument goes so far as to intimate that the written order must precede the acquisition.¹⁴⁷ The Supreme Court framed the issue in much the same way. The conflict was a definitional one between the tenants and HUD. Does "acquiring agency" simply denote a governmental body that has previously acquired property and that eventually orders persons to vacate, as contended by the tenants? Or, is "acquiring agency" only a shorthand description of an agency currently engaged in the process of acquiring property? The latter HUD interpretation contains an implicit acquisition requirement. Thus, under this construction, the written order clause would not apply unless an agency's proposed acquisition of property directly causes issuance of the orders to vacate. The tenants' interpretation demands no immediate causal connection between the procurement of property and the order to vacate.¹⁴⁸

The Court relied heavily on the very early versions of Section 101(6) to support its conclusion that only persons dislocated by actual or proposed acquisitions, and in particular, those acquisitions intended to further federal programs, were to be included in the Act's coverage.¹⁴⁹ The Court interpreted bits of very specific legislative history to indicate that the written order clause was an addition designed only to delineate more precisely a subcategory of the originally intended beneficiaries—those who move in anticipa-

¹⁴⁴ *Id.* at 12.

¹⁴⁵ *Cole v. Harris*, 571 F.2d 590, 601 (D.C. Cir. 1977) (Wilkey, J., dissenting).

¹⁴⁶ Petitioners Brief for Writ of Certiorari at 8, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979).

¹⁴⁷ *Cole v. Harris*, 571 F.2d 590, 601 (D.C. Cir. 1977) (Wilkey, J., dissenting).

¹⁴⁸ 47 U.S.L.W. 4369, 4371 (1979).

¹⁴⁹ *Id.* at 4373.

tion that a property acquisition for a federal program will require their displacement.¹⁵⁰ The Court found the clause refers only to the very narrow situation where planned, but unconsummated acquisitions of property for federal programs result in displacement.¹⁵¹ There was no discussion of how such a narrow interpretation would affect the values and broad policies underlying the concept of relocation assistance.

The result of the Court's reasoning is that a written order to vacate would not by itself set URA in motion, even if it were determined to be for a federal program or project. An acquisition prior to or contemporaneous with the written order would be required. This is exactly the reasoning adopted by the Supreme Court to deny the tenants in *Cole* relocation benefits.

Nothing in the language of the written order clause suggests such an interpretation.¹⁵² The statute clearly states that one is displaced if one moves "as a result of the acquisition" or "as the result of the written order of the acquiring agency."¹⁵³ The words "acquiring agency" seem to contemplate, in fact, that an acquisition will have already taken place. One must question how a "written order" could ever be issued by an acquiring agency *prior* to an acquisition. Such an order can only come from the entity that has legal authority to order evictions, i.e. the owner.

The construction, propounded by HUD and accepted by both Judge Wilkey and the Supreme Court, that excludes persons who are displaced by a written order occurring subsequent to the acquisition of their homes finds little support either in the language of the Act or in the broad legislative intent of the Act as previously examined. The very earliest relocation assistance statutes, which Congress considered inadequate, did not limit benefits to acquisition situations but covered persons displaced by "any form of government action" including "the closing or vacating of dwellings by public officials."¹⁵⁴ Senator Percy summarized the intentions of Congress in enacting URA: "We must insure that *anyone* who loses

¹⁵⁰ The Court relied heavily upon the proposed Fair Compensation Act of 1964, a very early precursor of URA, as the basis for most of the current provisions codified in the Relocation Act. In addition to this proposed relocation bill, the Court turned to early but unenacted versions of Section 101(6) to reinforce its conclusion concerning the limited scope of the written order clause.

¹⁵¹ 47 U.S.L.W. 4369, 4374.

¹⁵² See 42 U.S.C. § 4601(6) (1976).

¹⁵³ *Id.*

¹⁵⁴ S. REP. No. 1472, 83d Cong., 2d Sess. 26 (1954).

property or a home as a result of a public project receives fair compensation under a uniform set of procedures”¹⁵⁵

In light of the legislative history and underlying purpose of the Act one can easily envision a broad interpretation of “displaced persons” that includes those who receive notification of eviction both prior to and subsequent to the acquisition. The House Report carries this construction one step further, stating that “if a person moves as the result of such notice to vacate, it makes no difference whether or not the real property is actually acquired.”¹⁵⁶ Thus, the government’s contention that the written order must be issued in connection with an acquisition finds little convincing support either in the statutory language or the legislative history and should have been rejected by the Court.

2. Issue of Voluntary or Involuntary Acquisition

The issue relating to the characterization of a mortgage foreclosure as either voluntary or involuntary initially surfaced in the Second Circuit’s opinion in *Caramico v. HUD*.¹⁵⁷ This line of reasoning received further judicial support when the Seventh Circuit adopted basically the same approach,¹⁵⁸ reading the statute as stating that only “voluntary” acquisitions satisfy the Act. Thus, according to the Second and Seventh Circuits, involuntary acquisitions cannot qualify as a program or project within the meaning of URA.

The lower courts found a crucial difference between mortgage insurance acquisitions and acquisitions under programs originally contemplated by URA. The former were characterized as “random and involuntary while normal urban renewal contemplates a conscious government decision to dislocate some so that an entire area may benefit.”¹⁵⁹ Acquisitions by such involuntary and random

¹⁵⁵ *Senate Hearings*, *supra* note 69, at 57-58 (emphasis added).

¹⁵⁶ H.R. REP. No. 91-1656, 91st Cong., 2d Sess. 4 (1970).

¹⁵⁷ 509 F.2d 694 (2d Cir. 1974).

¹⁵⁸ *Alexander v. HUD*, 555 F.2d 166, 169 (7th Cir. 1977), *aff’d*, 47 U.S.L.W. 4369 (1979). The tenants in *Alexander* have incorrectly sought to distinguish *Caramico* on the grounds that it construed the “acquisition clause” while they were relying on the “written order clause”. They further argued that in *Caramico* HUD was not the mortgagee, did not foreclose on the mortgage, nor did the agency eventually purchase the property.

The Seventh Circuit properly rejected the idea that the two cases were distinguishable: “[A]lthough distinguishable with respect to particular facts, *Caramico* involved the same inquiry as presented by this case, *i.e.*, whether the activity of the governmental agency was for a program or project undertaken by a Federal agency or with Federal financial assistance.” *Id.* at 169.

¹⁵⁹ *Alexander v. HUD*, 555 F.2d 166, 169 (7th Cir. 1977), *aff’d*, 47 U.S.L.W. 4369 (1979),

means rather than by conscious government decision were held not to be for a federal "program or project." In other words, acquisitions that precede the order to vacate must be characterized as *voluntary* on the part of the acquiring agency before any tenant can invoke the provisions of URA.

Judge Wilkey, in his lengthy dissent in *Harris v. Cole*,¹⁶⁰ also adopts the view that the taking of title by HUD was an involuntary acquisition in response to a defaulted mortgage. He accepts HUD's contention that the acquisition must be made as a voluntary and conscious choice, stating: "[B]oth clauses contemplate a *voluntary* acquisition. . . . [T]he acquisition here, by default and foreclosure of an insured mortgage, should be considered involuntary" ¹⁶¹

Judge Wilkey also cited the Second Circuit's reading of the "program" definition as "contemplating normal government acquisitions, which are the result of conscious decisions to build a highway here or a housing project or hospital there."¹⁶² He argued in accord with the Second and Seventh Circuits that acquisitions due to defaults and foreclosures, being involuntary and random, were not for a "program or project."¹⁶³

The Supreme Court summarily dismissed this analysis in a footnote, by stating that to focus on the "voluntariness oversimplifies application of the statute [V]oluntariness is relevant only to the extent it is probative of the agency's overall purpose in procuring property."¹⁶⁴ The Court's decision finds ample support in the wording and history of the Act. However, the Court's outright rejection of the question without any analysis in the text of the opinion is disappointing as it tends to minimize the import of the decision and fails to quell future questions concerning the basis for its decision.

The "voluntary" acquisition requirement argued by the government was simply being read into the statute. The existence of such

citing *Caramico v. HUD*, 509 F.2d 694, 698 (2d Cir. 1974).

¹⁶⁰ Though we are basically concerned with the conflict between the majority position of the Seventh Circuit as espoused in *Alexander v. HUD* and that of the Second Circuit in *Cole v. Harris*, Judge Wilkey's dissent is often referred to for an extrapolation of the pertinent issues. His lengthy and well-written dissent is a complete and detailed examination of the issues whereas the court in *Alexander* did not proceed in such depth.

¹⁶¹ *Cole v. Harris*, 571 F.2d 590, 601 (D.C. Cir. 1977) (Wilkey, J., dissenting) (*referring to* 42 U.S.C. § 4601(6) (1976)).

¹⁶² *Cole v. Harris*, 571 F.2d 590, 603 (D.C. Cir. 1977) (Wilkey, J., dissenting).

¹⁶³ *Cole v. Harris*, 571 F.2d 590, 604 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁶⁴ 47 U.S.L.W. 4369, 4376 n.43 (1979).

a requirement is not apparent from the plain language of the Act. There is no mention in URA of this crucial difference between voluntary and involuntary acquisitions. In fact, neither the word voluntary nor involuntary even appear in the statute, nor is there even a suggestion that such an inquiry be made. If this was the result Congress sought to achieve, the definition of displaced person would more appropriately be: one who moves from real property as the result of the *conscious or voluntary* acquisition of real property. Such a definition, however, was not adopted. To the contrary, the long legislative history¹⁶⁵ of URA indicates that Congress was primarily concerned with the effects of displacement on persons who were financially and socially unable to meet the hardships imposed by government acquisitions. The degree of hardship suffered by these people does not seem to have any relation whatsoever to the government's state of mind at the time of acquisition.¹⁶⁶ The Act is a uniform act intended to be equitably and uniformly applied.¹⁶⁷ There seems to be no justifiable reason why a tenant displaced by an involuntary government acquisition should be treated differently than a tenant displaced by a voluntary acquisition.

Even if the Court had accepted the proposition that an acquisition must be voluntary before URA is applicable, there is evidence that the acquisition of both Riverhouse and Sky Tower can comfortably fit within this requirement. HUD acquired Sky Tower after a conscious decision that it would not allow the developer (HDC) to act as its own contractor because the project could not be run successfully as a Section 236 project.¹⁶⁸ District Court Judge Gesell found that HUD "insisted that the property be foreclosed."¹⁶⁹ Further, the "written orders" to vacate that resulted in displacement

¹⁶⁵ See Section II(B), *supra*.

¹⁶⁶ The broad humanitarian concern that Congress had can be seen from an example that received emphasis early in the deliberations. The situation involved a family which lived adjacent to a town that had been acquired by the U.S. Army in order to build a dam. The family was forced to move in that they had relied upon the town for all services even though the Army neither needed nor acquired their property. The House Judiciary Committee reported favorably on a special bill to provide this family relief. The House, in its Study of Compensation, *supra* note 38, at 124-26, discussed this particular situation showing great concern about the inequity to the displaced family and no concern whatsoever that the acquisition would be involuntary or unnecessary or an unanticipated consequence of a previous voluntary project. Simple justice required providing assistance to the displaced family. Brief for Petitioners at 22, n.28, *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979).

¹⁶⁷ 42 U.S.C. § 4621 (1976).

¹⁶⁸ See National Housing Act § 236, 12 U.S.C. § 1715z-1 (1976).

¹⁶⁹ *Cole v. Lynn*, 389 F. Supp. 99, 101 (D.D.C. 1975).

were not issued for more than twelve months after HUD's acquisition of title. The project was run by a management firm during which time HUD undertook studies to determine the ultimate disposition of the property. Only after these studies were completed did HUD decide to pursue the demolition and sale alternative. This hardly seems like an involuntary acquisition or involuntary displacement of persons. At either point HUD had at least one other option which would have prevented the eventual displacement.¹⁷⁰

The Riverhouse project presents a similar pattern. HUD acquired title to this project also pursuant to the National Housing Act, albeit a different provision than above. The pertinent section¹⁷¹ empowers the agency to foreclose on a defaulting mortgagor and to purchase the property at public sale. However, it does not mandate that the agency pursue this option.

The Secretary at any sale under foreclosure *may* in his discretion . . . bid any sum up to but not in excess of the total unpaid indebtedness secured by the mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses, and may become the purchaser of property at such sale.¹⁷²

During the three year period from July 1970, when the note and mortgage were assigned to HUD in return for the insurance proceeds, HUD allowed the owner to operate the property rather than to foreclose or seek a court-appointed receiver. It was not until 1973 that HUD decided to foreclose and then voluntarily purchased the property at the foreclosure sale.

In the government's Reply Memorandum for Petitioners in the *Cole* case, HUD virtually acknowledges the voluntary nature of the Riverhouse acquisition. Comparing the acquisition of Riverhouse to the acquisition of Sky Tower in *Cole*, the government stated:

[T]he Department obtained title to the project by bringing its own foreclosure action in the face of the mortgagor's continuing default. Since the Department had the option of refraining from foreclosure and continuing to suffer the mortgagor's default, the acquisition could be considered "voluntary" in the same sense that respondents [Cole ten-

¹⁷⁰ "HUD concluded that five alternative disposition plans were available, four involving variations on continuing the rehabilitation and the sixth requiring demolition for the development of single family homes. The demolition alternative was selected." Brief for Respondents at 7, *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁷¹ National Housing Act § 207K, 12 U.S.C. § 1713(K)(1976) (emphasis added).

¹⁷² *Id.* (emphasis added).

ants] contend the acquisition of Sky Tower was "voluntary." Indeed, since the Department acquired title to the project in *Alexander* through its own action rather than automatically in response to action by the mortgagee, the acquisition in *Alexander* could be said to be even more "voluntary" than the acquisition in the present case.¹⁷³

Thus, there seems to be little statutory justification for requiring that the acquisition be characterized as "voluntary" before benefits might become available and the Court was correct in dismissing the issue. Even if the "voluntary" nature had been required, the evidence is strong enough to indicate that the acquisitions in the instant cases met this requirement.

3. Issue of Acquisition Being Made for a Federal Program

The final issue to be resolved prior to the central inquiry regarding the federal program or project requirement is whether the statute requires that the agency's *acquisition* of the property, and not simply the orders to vacate, be made for the purpose of a "project undertaken by a federal agency." HUD contends that the acquisition, as well as the written orders, must be for a federal program or project.

Even if the demolition were considered such a program or project, or even if the demolition anticipates a further program or project, that is not sufficient to trigger the statute unless the agency's acquisition of the property — not simply its order to vacate — was made for that purpose.¹⁷⁴

The government claimed that the D.C. Circuit in *Cole* gave too broad a construction to the phrase "for a program or project undertaken by a federal agency," and that the phrase should refer back singly to the "acquisition clause."¹⁷⁵ Again, the Supreme Court relied heavily on the very early versions of portions of the Act to support the government's claim. The Court placed emphasis on the fact that since "acquisitions of property" seemed to be the key element to eligibility in these early pieces of legislative history, it was important to remain consistent with this approach. The Court's decision was that the acquisition must be for or intended to further a federal program or project. A program developed after the agency

¹⁷³ See Brief for Petitioners at 24, *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979) (citing Reply Memorandum for Petitioners at 3, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979)).

¹⁷⁴ Petitioner Brief for Writ of Certiorari at 14-15, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979).

¹⁷⁵ *Id.*

procures property and causes displacement will not trigger benefits since the program could not have motivated the property acquisition.¹⁷⁶ The Court apparently adopts HUD's position that the language "for a program or project" refers to the agency's original purpose in acquiring property, not just its purpose in issuing an order to vacate. The written order clause is to apply only if an agency issues its notice to vacate *pursuant* to an actual or proposed acquisition of property *intended to further a federal program*.¹⁷⁷ Thus persons such as the tenants in *Alexander* and *Cole*, are ineligible to obtain relocation assistance unless the agency also *intended* at the time of acquisition to use the property for a federal program or project.

The difficulty of determining an agency's *subjective intent* is obvious. In practical terms requiring applicants for URA benefits to carry this burden of proof will insulate the agency from any assistance responsibility. Past agency practices have shown the inclination to avoid these financial responsibilities and to now require proof of *subjective intent* defeats the purpose of the statute—to aid those who cannot shoulder the burden of displacement alone.

Further, the more natural reading, adopted by the D.C. Circuit,¹⁷⁸ is to have the phrase refer both to the word "acquisition" and the term "written order." The two clauses are disjoint requirements. Whether the original acquisition was for a federal program or project is not material as long as the written order is pursuant to such a program. Further support for this interpretation is found in a ruling by the Comptroller General stating that the time to determine whether Relocation Act services are available is when the tenants are evicted, not when the acquisition occurred.¹⁷⁹

In the maze of semantic and legal technicalities surrounding each issue it is easy to lose sight of the purpose of relocation assistance. As one examines each issue it is important to remember the congressional intent underlying the Act. Congress was concerned with the harsh human effects of governmental programs that result in population displacement. The primary interest sought to be addressed by URA was congressional concern for the displacees. Any technical interpretation, similar to that presented here, that reduces the intended impact of the Act by refusing benefits to vulner-

¹⁷⁶ 47 U.S.L.W. 4369, 4376 n.43 (1979).

¹⁷⁷ *Id.* at 4372.

¹⁷⁸ *Cole v. Harris*, 571 F.2d 590, 596 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁷⁹ 52 Comp. Gen. 300, 304 (Nov. 28, 1972).

able displacees, must be examined with a jaundiced eye.

The only remaining issue of import is whether or not there exists a federal program or project. It is this final point that was the crux of the cases before the Court and upon which the decision ultimately should have rested.

4. Can Mortgage Foreclosure be Characterized as a Federal Program or Project?

The Court was faced with resolving the basic controverted question of whether foreclosure and subsequent disposition by HUD is to be considered a program "undertaken by a federal agency or with federal financial assistance." Congress chose not to explicitly define the terms "program" or "project" in the Act.¹⁸⁰ Nor does the legislative history "illuminate Congress' intent with respect to those terms."¹⁸¹ Since there is judicial precedent that statutory language should be read as it is understood in common usage,¹⁸² attention must be paid to the everyday connotation of the words. The Oxford English Dictionary defines "project" as "something proposed for execution; a plan, scheme, purpose, a proposal" and "program" as "a definite plan or scheme of any intended proceedings; an outline or abstract of something to be done."¹⁸³

There are four basic approaches that can be adopted in order to reach a determination of this broad but crucial interpretive question. Each line of reasoning was addressed by the litigants in their briefs to the Supreme Court¹⁸⁴ and each appears worthy of analysis. The first approach is to interpret "program or project" as requiring some construction of new structures or rehabilitation of existing ones. The second approach would define "program or project" as any plan that would further or accomplish a program designed to benefit the public as a whole. This approach results in a tautology that defines the elusive "program or project" as a "program or project." The third approach is to classify the original mortgage insurance program that eventually led to the acquisition as a federal

¹⁸⁰ 42 U.S.C. § 4601(6) (1976). The lack of attention to the definition of these words in the general provisions of the Act is evidence of the choice not to specifically define program or project.

¹⁸¹ *Alexander v. HUD*, 555 F.2d 166, 169 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

¹⁸² See *NLRB v. Highland Park Mfg. Co.*, 341 U.S. 322, 324-25 (1951).

¹⁸³ THE COMPACT EDITION OF THE OXFORD ENGLISH DICTIONARY 2319-2320 (1971).

¹⁸⁴ Brief for Petitioners, *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); Brief for Respondents, *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

“program or project.” Finally, the Property Disposition Program, developed by HUD, can also be classified as a distinct federal program.

Anyone of these issues could, and probably should, have been the primary basis for the Court’s decision. However, the Court chose to give only limited attention to these most critical inquiries. Finding, its legislative history analysis of the Section 101(6) written order clause basically dispositive of the cases, the Court provided an extremely limited analysis of these other issues.

As to the first issue of whether actual construction might be required, the Court chose not to engage in any discussion or analysis; the issue was completely ignored. The Court’s treatment of the second issue consisted of a single statement recognizing that Congress, by requiring that an acquisition be for a federal program or project, intended that the acquisition must further or accomplish a program designed to benefit the public as a whole.¹⁸⁵ The Court provided a bit more discussion regarding the third issue of whether the original mortgage insurance program was a distinct program within the purview of the Act. Relying on its prior analysis of legislative history, but without any significant explanation, the Court held that “the mere anticipation and authorization of default acquisitions in the mortgage insurance programs cannot trigger the benefits of the Act.”¹⁸⁶ Furthermore, it stated that even should the mortgage insurance programs constitute federal programs or projects, the causality requirements of Section 101(6) would not be satisfied. In the cases before the Court the acquisitions occurred as a result of predictable failures and consequently did not further the basic purpose of these particular programs.¹⁸⁷

The treatment of HUD’s Property Disposition Program, which sets out procedures for disposing of property acquired by the agency, was similarly lacking in-depth analysis. The Court did recognize and admit that the Disposition Program was in fact a Section 101(6) “federal program or project.” However, such a finding was not enough to bring the tenants within URA. Since HUD did not *acquire* the properties specifically to further the Disposition Program, the causality requirement was not met. The Court reasoned that the statute required more than a casual connection between the

¹⁸⁵ Alexander v. HUD, 47 U.S.L.W. 4369, 4376 (1979).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

orders to vacate and the demolition program. The program or project must also be the reason for acquiring the property.¹⁸⁸

Though given limited attention by the Court, each of these positions is set forth here to provide the reader with the same set of questions that was faced by the Supreme Court. The author posits that taken together there was ample reason to reach an opinion contrary to that of the Court.

a. The Requirement of Construction

The government suggested that a "program" or "project" refers only to a "federal construction or rehabilitation project, such as public works or urban renewal,"¹⁸⁹ and not to the mere elimination of a presently existing home or apartment complex. This contention has been accepted in varying degrees over the years. The requirement has been interpreted to refer to construction of new federal projects.¹⁹⁰ The Second Circuit also intimated that since there are a number of references within URA to construction activities, Congress intended the program requirement to mean construction programs.¹⁹¹ The *Alexander* court, though not directly relying on this proposition, did make reference to decisions construing this additional "construction" requirement.¹⁹²

The language of the statute shows no indication that such a requirement was intended. No mention is made of the word "construction" nor is there any language that could be interpreted to suggest such a limitation. No doubt there exist isolated bits of statutory language that make reference to "construction." In fact the 2d Circuit in *Caramico* drew attention to Section 4626 of URA which makes reference to "actual construction."¹⁹³ However, no mention is made of the fact that the context in which these words appear bears no relationship to the eligibility requirements of Section 101(6). The reference is made in the section that permits the head of the appropriate federal agency to take action in providing replacement housing if the lack of same has kept the project from

¹⁸⁸ *Id.*

¹⁸⁹ *Cole v. Harris*, 571 F.2d 590, 595 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁹⁰ *See Jones v. HUD*, 390 F. Supp. 579, 583 (E.D. La. 1974).

¹⁹¹ *Caramico v. HUD*, 509 F.2d 694, 698 (2d Cir. 1974).

¹⁹² *Alexander v. HUD*, 555 F.2d 166, 169 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979) *citing Jones v. HUD*, 390 F. Supp. 579, 583 (E.D. La. 1974); *Caramico v. HUD*, 509 F.2d 694, 698 (2d Cir. 1974).

¹⁹³ *Caramico v. HUD*, 509 F.2d 694, 698 (2d Cir. 1974).

proceeding to actual construction. To draw such an important restriction from isolated and out of context references would do damage to the broad intent of the Act.

The tenants in *Cole* and *Alexander* maintained that an acceptance of this requirement by the Supreme Court would lead to an interpretation of URA not possibly intended by Congress.¹⁹⁴ The limitation would result in demolition of the property being considered a program or project only when the acquiring agency constructs a building in its place. When the agency simply tears down a project without rebuilding there would be no "program or project" within URA, thereby relieving the agency of their financial responsibilities vis a vis relocation benefits. The District of Columbia Circuit recognized this anomaly stating:

HUD's mandate is to increase the stock of decent, sanitary housing for low-income families—not to destroy existing housing. Congress clearly did not intend that tenants displaced by a simple decision to wreck their homes would receive less protection than tenants displaced by a constructive urban renewal project.¹⁹⁵

b. The Requirement of Public Benefit

The court in *Alexander*, though making reference to the above line of reasoning, proceeded directly to a consideration of Section 201, the Declaration of Policy provision of URA.

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.¹⁹⁶

The court saw the last phrase as controlling by defining a "program" as an activity that would, at least in design, benefit the public as a whole. The abandonment of the Riverhouse project and the coterminous order to quit was not characterized "as a program or project designed to benefit the public as a whole." Closure of the project was viewed as nothing more than an admission that the original project, designed to provide the poor with adequate housing, was an irretrievable failure. The court reasoned that the mere

¹⁹⁴ See generally Brief for Petitioners, *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979); Brief for Respondents at 28, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979).

¹⁹⁵ *Cole v. Harris*, 571 F.2d 590, 595 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

¹⁹⁶ 42 U.S.C. § 4621 (1976) (emphasis added).

decision to terminate a project could not possibly become a new project, absent at least some indication that the order to quit was a prelude to some government activity designed for the public's benefit.¹⁹⁷

The court in *Cole* also addressed to some degree the issue of whether the abandonment and subsequent demolition of a housing project is properly characterized as a program designed to accomplish an objective that would benefit the public as a whole. The district court found that HUD issued the written order to vacate in order to demolish the buildings so that blight could be eliminated and middle-income homes built on the site in accordance with a master plan for the area.¹⁹⁸ The court did not reach the question of whether programs or projects by definition required some new construction, only that in the *Cole* case such a plan for construction certainly did qualify as such a program.

At the time Sky Tower was demolished there was a master plan¹⁹⁹ for the local area that contemplated the construction of single family homes on the cleared site. Such a proposed plan did not exist in *Alexander*. Consequently, the Supreme Court was faced with the comparison between a demolition *in anticipation* of a subsequent building program and a demolition without any subsequent program planned. A better approach would be to characterize both demolitions as efforts to eliminate blight caused by vandalized, unsafe and unattractive housing projects. Clearly, such a demolition project would be for the benefit of the public as a whole in urban areas that need revitalization. Further, the original policy underlying the Act reveals no indication that a plan for subsequent construction is required to trigger the benefits. Such a plan could constitute a program but its absence is irrelevant. If relocation benefits were withheld in these instances, the displaced tenants would be forced to bear a disproportionate share of the costs of a project designed for the benefit of the general public. This would be in clear contradiction to the intent of the Act.²⁰⁰

c. Mortgage Insurance as a Distinct Program

As we have seen, the courts have focused much attention on the

¹⁹⁷ *Alexander v. HUD*, 555 F.2d 166, 170 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979).

¹⁹⁸ *Cole v. Hills*, 396 F. Supp. 1235, 1236 (D.D.C. 1975).

¹⁹⁹ See text at notes 133-34, *supra*.

²⁰⁰ 42 U.S.C. § 4621 (1976). See text at notes 49-77, *supra*.

problem of whether a federal program or project exists in a particular case. Generally, they have looked to the time period following the original acquisition. The history of URA does not indicate that such a restrictive approach to "program or project" should be taken. In fact, the broad intent of the Act would seem to mandate that "program or project" be read in its broadest sense.

In their preoccupation with the search for a post-acquisition "program" or "project," the courts have overlooked an obvious position. The history of government mortgage insurance indicates that the acquisition, itself, was made pursuant to a federal program. Mortgage defaults and subsequent purchases of the property by HUD can be said to be a fully expected and consciously planned for result of a federal program.²⁰¹

The government first became involved with this type of mortgage insurance in 1968 when Section 236²⁰² was added to the National Housing Act of 1934.²⁰³ In order to stimulate the development of housing for low-income families, Section 236 was designed to attract private mortgage funds into the low-income housing market.²⁰⁴ HUD was authorized to pay interest subsidies in order to reduce the mortgagor's annual interest rate to 1% and also to insure mortgage loans that were made to developers in the low-income market.²⁰⁵ The interest subsidy payments obviously would require an annual appropriation of federal funds. Congress, apparently recognizing that the receipt of insurance premiums would not provide sufficient funding for the insurance program, authorized appropriations for a Special Risk Insurance Fund.²⁰⁶ The anticipation was that the insurance program would absorb excessive costs resulting in a net loss to the program.²⁰⁷ The Special Fund was to cover these losses. The House Report stated that substantial assistance would be provided by the new programs and such aid was worth the anticipated costs.²⁰⁸ The Senate Report is even more to the point on this issue:

[T]he bill would establish, . . . a "Special Risk Insurance Fund" which would not be intended to be actuarially sound and out of which

²⁰¹ Brief for Respondent at 30, *Harris v. Cole*, 47 U.S.L.W. 4369 (1979).

²⁰² Section 236 was part of the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476, 498; 12 U.S.C. § 17152-1 (1976).

²⁰³ National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934) (as amended).

²⁰⁴ 12 U.S.C. § 1715z-1 (1976).

²⁰⁵ *Id.*

²⁰⁶ *Id.* at § 1715z-3.

²⁰⁷ *Id.*

²⁰⁸ H.R. REP. No. 1785, 90th Cong., 2d Sess. 152 (1968).

claims would be paid on mortgages insured under the new [section] . . . 236.

* * *

[T]he fund would be authorized to cover any losses sustained by the fund in carrying out the mortgage insurance obligations of these programs . . . [I]t is intended that the Secretary be able to obtain appropriations to cover anticipated or projected losses as well as actual losses *in order to provide adequate operating funds during the long period required to liquidate properties.*²⁰⁹

The mortgage default acquisitions by HUD in these cases can hardly be properly characterized as not being for a federal program or project when in fact they were expressly anticipated and funds were appropriated to cover the costs of the program.²¹⁰

d. Property Disposition as a Distinct Program or Project

The search for post-acquisition programs has further led the courts past a realistic interpretation that could satisfy the intent of Congress. HUD's Property Disposition Program that eventually results in demolition is, of itself, a "program" within the meaning of URA.²¹¹ This Disposition Program is statutorily based in Section 207(L) of the National Housing Act.²¹² That provision grants HUD wide discretion in the acquisition and disposition of properties that have been insured and subsidized under the various NHA programs.²¹³ HUD is authorized through the Secretary "to complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of . . . , or sell for cash or credit or lease in his discretion, any property acquired by him under this section"²¹⁴ The policies, procedures and regulations adopted by HUD to deal with foreclosed properties such as Sky Tower and River-

²⁰⁹ S. REP. NO. 1123, 90th Cong., 2d Sess. 15 (1968) (emphasis added).

²¹⁰ The Riverhouse project in *Alexander v. HUD* was financed by a mortgage insured and subsidized by HUD through a similar government program, found in Section 221(d)(3) of the National Housing Act as amended. 12 U.S.C. § 1715(d)(3) (1976). Riverhouse was constructed to provide decent housing for low income persons and, ironically, in particular, those who had been displaced by governmental action.

²¹¹ See Brief for Petitioners at 29, *Alexander v. HUD*, 47 U.S.L.W. 4369 (1979).

²¹² 12 U.S.C. § 1713(L) (1976).

²¹³ *Id.*

²¹⁴ *Id.* HUD developed a "disposition program" pursuant to this mandate. See generally U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT, HUD PROPERTY HANDBOOK—MULTI-FAMILY PROPERTIES, RHM 4315.1 (1971).

house prior to acquisition,²¹⁵ during ownership,²¹⁶ as well as during disposition²¹⁷ are all clearly detailed in HUD procedures.

Prior to the final disposition of the two properties at issue, HUD undertook studies to evaluate the best use of the property in accordance with the Property Disposition Program procedures.²¹⁸ In both instances management firms were hired to operate the property pending the outcome of the studies, and in both instances HUD eventually determined that it was in the government's best interest to close down the projects.²¹⁹

Recently HUD has developed a new Property Disposition Program²²⁰ which presently governs such acquisitions. The new program draws from and expands upon the prior program's considerations and policies.²²¹ The regulations²²² indicate that the disposition program is a complex plan to be developed through the analysis of any number of factors²²³ and is designed to accomplish results that will provide benefits to the public as a whole.²²⁴ HUD's Property Disposition Program requires the department to assess a number of social and economic factors;²²⁵ to make a difficult decision on whether to continue to operate the project or abandon the purposes for which it was built;²²⁶ to decide whether or not to rehabilitate the property²²⁷ and to set forth the procedures for sale once that decision is reached.²²⁸ Certainly such extensive procedures and plans constitute a "program" within the commonly understood meaning of that term.²²⁹

²¹⁵ *Id.* ch. 3, at 7-15.

²¹⁶ *Id.* ch. 4, at 27-42; ch. 6, 7, at 56-72.

²¹⁷ *Id.* ch. 3, § 1, at 7.

²¹⁸ *Id.*

²¹⁹ See *Alexander v. HUD*, 555 F.2d 166 (7th Cir. 1977), *aff'd*, 47 U.S.L.W. 4369 (1979); *Cole v. Harris*, 571 F.2d 590 (D.C. Cir. 1977), *rev'd*, 47 U.S.L.W. 4369 (1979).

²²⁰ 24 C.F.R. 290 (1978).

²²¹ Brief for Petitioners at 32, *Alexander v. HUD*, No. 77-874 (S. Ct. argued Dec. 5, 1978).

²²² 24 C.F.R. 290 (1978).

²²³ 24 C.F.R. §§ 290.10, 290.20, 290.30, 290.40 (1978).

²²⁴ 24 C.F.R. § 290.10 (1978).

²²⁵ *Id.* § 290.30.

²²⁶ *Id.* § 290.10.

²²⁷ *Id.* § 290.30.

²²⁸ *Id.*

²²⁹ Brief for Petitioners at 33, *Alexander v. HUD*, No. 77-874, (S. Ct. argued Dec. 5, 1978).

The new Property Disposition Program, 24 C.F.R. Part 290 under which Riverhouse was sold, even more dramatically demonstrates the benefits which accrue to the public once HUD obtains ownership of the property. That program pursues the public policy of providing decent housing and a suitable living environment for all Americans in accordance with

The Mortgage Insurance Program and the Property Disposition Program seem to comfortably fulfill the program or project requirement of Section 101(6) of URA.²³⁰ This was explicitly recognized by the Court with respect to the Disposition Program, and implicitly recognized with respect to the Insurance Program. Unfortunately, the causality requirement demanded by the Court precluded relief for the tenants of Riverside and Sky Tower.

IV. CONCLUSION

A number of sources have been examined in order to reach an understanding of URA, its basic purpose and its scope. The specific provisions of the Act indicate just what is at stake financially for "displaced persons," the majority of whom are socially and economically disadvantaged. The broad legislative history of URA provides strong support for the proposition that Congress intended the Act to be a humanitarian and remedial statute that was to have broad application. Yet, with the exception of the D.C. Circuit in *Cole v. Harris* the judiciary, now with the approval of the Supreme Court, has chosen to narrowly, and at times tortuously, construe the provisions of the Act. Benefits have been denied to that class of persons whom Congress sought to aid. A broad interpretation and application of the Act as originally intended by Congress is more appropriate.

Each and every American has the right to be housed in a decent, safe and sanitary dwelling. This right should not be denied by HUD, the agency charged under the law with ensuring just such a result. HUD has argued forcefully that the cost factor of extending URA to the limits urged by the tenants is prohibitive. This position ignores the basic fact that the tenants in *Alexander* and *Cole* are members of that class of persons whom Congress sought to aid originally. Providing relocation benefits to this category of displaced persons would not be an extension or broadening of URA but only its proper application. Secondly, if the standard for relocation assistance is that the public as a whole shall not benefit at the expense

42 U.S.C. § 1441a; and because of that program, HUD may no longer dispose of property without consideration for the policies underlying the National Housing Act. Rather, it must exercise its powers with the express purpose of preserving housing for low to moderate income persons at rents which they can afford, while at the same time protecting the financial interests of the government.

Id. at 35.

²³⁰ See Section III(c), *supra*.

of any other segment of the population, then the public should be required to bear its full share of the costs of relocation. The burden should not fall on those least able to pay.

Human values are at the heart of the URA. We must consider in our analysis the extreme human costs to those displaced. The demoralizing social and psychological consequences of loss of home, neighborhood, friends and community are not and cannot ever be provided for.

The Court has chosen to interpret the Act's benefits with a narrow vision. The impact of dislocation on an individual is the same regardless of the intent of an agency when it originally acquired the property. It is now incumbent upon Congress to expand the scope of the Act by clear language incapable of being narrowly construed.